1	JOHNSON BOTTINI, LLP		
2	FRANK J. JOHNSON (174882) frankj@johnsonbottini.com BRETT M. WEAVER (204715)		
3	brett@johnsonbottini.com		
4	501 W. Broadway, Suite 1720 San Diego, CA 92101		
5	Telephone: (619) 230-0063 Facsimile: (619) 238-0622		
6	COHEN COOPER ESTEP & ALLEN, LLC		
7	STEVEN J. ESTEP (GA Bar No. 250450) sestep@ccealaw.com JEFFERSON M. ALLEN (GA Bar No. 010898) jallen@ccealaw.com Admitted Pro Hac Vice 3330 Cumberland Boulevard, Suite 600 Atlanta, Georgia 30339 Telephone: (404) 814-0000		
8			
9			
10			
11	Facsimile: (404) 816-8900		
12	Attorneys for Creditor Cold Smoke Finance LLC		
13	UNITED STATES BANKRUPTCY COURT		
14	SOUTHERN DISTRICT OF CALIFORNIA		
15	In re	Case No. 10-12306-PB7	
16	DAVID KAHN	Chapter 7	
17		CREDITOR COLD SMOKE FINANCE,	
18	Debtor.	LLC'S EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF DAVID KAHN	
19		AND TIM MCCALLUM	
20		DATE: May 2, 2011	
21	TIME: 10:30 a.m. DEPARTMENT: Four		
22		COURTROOM: 328	
23		HONORABLE PETER W. BOWIE	
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Cold Smoke's Proof of Claim No. 11:

OBJECTIONS TO THE DECLARATION OF DAVID KAHN

Objections To The Declarations Submitted In Connection With Debtor David Kahn's Objection to

Creditor Cold Smoke Finance, LLC ("Cold Smoke") submits the following Evidentiary

5	EVIDENCE	OBJECTIONS & AUTHORITIES	RULING ON THE
6		AUTHORITIES	OBJECTION
7	5. I understand that SMOKE FINANCE contends	Lacks Foundation / Lack of Personal Knowledge (Fed. R.	Sustained:
8	that Tim McCallum and All-	Evidence § 602). Kahn does	Overruled:
9	Star Apparrel, Inc., a Nevada corporation ("All Star") and	not provide any basis for how he would have personal	
10	each of them defrauded SMOKE FINANCE by making	knowledge of Cold Smoke's allegations.	
11	false statements in order to borrow funds from SMOKE	Hearsay (Fed R. Evidence §	
12	FINANCE.	801(c)). To the extent Kahn	
13	Kahn Decl. ¶ 5.	bases his allegation on the contents of statements from	
14		Dan Brooks (President of Cold Smoke) or the contents of	
15		pleadings, the testimony and contents of such writings is	
16		hearsay.	
17	6. Specifically, I	Lacks Foundation/Lack of	Sustained:
18	understand that SMOKE FINANCE contends that Mr.	Personal Knowledge (Fed. R. Evidence § 602). Kahn does	Overruled:
19	McCallum, All-Star and each of them represented to SMOKE	not provide any basis for how he would have personal	
20	FINANCE that	knowledge of Cold Smoke's allegations.	
21	Kahn Decl. ¶ 6.		
22		Hearsay (Fed R. Evidence § 801(c)). To the extent Kahn	
23		bases his allegation on the contents of statements from	
24		Dan Brooks (President of Cold	
25		Smoke) or the contents of pleadings, the testimony and	
26		contents of such writings is hearsay.	
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-1-

Case 10-12306-PB11 Filed 03/16/11 Doc 96 Pg. 3 of 8 10. I understand that Lacks Foundation/Lack of Sustained: 1 SMOKE FINANCE contends Personal Knowledge (Fed. R. Overruled: ____ that its principal, Dan Brooks, Evidence § 602). Kahn does first began discussion with Tim not provide any basis for how McCallum in Spring 2007 he would have personal 3 about SMOKE FINANCE knowledge of Cold Smoke's 4 providing loans to All Star. allegations. 5 Kahn Decl. ¶ 10. Hearsay (Fed R. Evidence § 801(c)). To the extent Kahn 6 bases his allegation on the contents of statements from 7 Dan Brooks (President of Cold 8 Smoke) or the contents of pleadings, the testimony and 9 contents of such writings is hearsay. 10 Attached hereto as Lacks Foundation/Lack of Sustained: 12. 11 Personal Knowledge (Fed. R. Exhibit A is a true and correct Overruled: _____ 12 copy of the Declaration of Tim Evidence § 602). Kahn does not provide any basis for how McCallum, which was 13 executed by him on February he would have personal 11, 2011. I received the knowledge of Cold Smoke's 14 Declaration of Tim McCallum allegations. directly from Mr. McCallum on 15 Hearsay (Fed R. Evidence § February 11, 2011. 801(c)). To the extent Kahn 16 Kahn Decl. ¶ 12. bases his allegation on the 17 contents of statements from Dan Brooks (President of Cold 18 Smoke) or the contents of pleadings, the testimony and 19 contents of such writings is 20 hearsay. 21 In addition, the Declaration of Tim McCallum should be 22 stricken and/or disregarded in whole or in part for reasons 23 specifically described below. 24 25 26

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OBJECTIONS TO THE DECLARATION OF TIM MCCALLUM – EXHIBIT A TO DECLARATION OF DAVID KAHN

2	EVIDENCE	OBJECTIONS &	RULING ON THE
3		AUTHORITIES	OBJECTION
T 11	2. According to Court	Lacks Foundation/Lack of	Sustained:
- 11	Records submitted by Dan Brooks, The Family Office,	Personal Knowledge (Fed. R. Evidence § 602). McCallum	Overruled:
	LLC ("TFO") is a Georgia	does not provide any basis for	
	limited liablity company and Dan Brooks is its President,	how he would have personal knowledge of The Family	
7	CEO and sole member.	Office's ownership or	
3	McCallum Decl. ¶ 2.	organizational structure.	
9	Wiccanam Beer. 1 2.	Hearsay (Fed R. Evidence §	
0		801(c)). To the extent	
		McCallum bases his allegation on the contents of statements	
1		from Dan Brooks (President of	
2		Cold Smoke) or the contents of other court filings, the	
3		testimony and contents of such	
4		writings is hearsay.	
<i>=</i> 11	3. According to Court	Lacks Foundation/Lack of	Sustained:
	Records submitted by Dan Brooks, Cold Smoke Finance,	Personal Knowledge (Fed. R. Evidence § 602). McCallum	Overruled:
`∥	LLC ("Cold Smoke") Cold	does not provide any basis for	
	Smoke is the successor interest of TFO and assignee of TFO's	how he would have personal knowledge of The Family	
_	unsecured loans with All Star.	Office's ownership or	
9	McCallum Decl. ¶ 6.	organizational structure.	
)	жили доси. до.	Hearsay (Fed R. Evidence §	
		801(c)). To the extent McCallum bases his allegation	
1		on the contents of statements	
2		from Dan Brooks (President of	
3		Cold Smoke) or the contents of other court filings, the	
4		testimony and contents of such	
5		writings is hearsay.	
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	CREDITOR COLD SMOKE FINANCE, LLC'S EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF		

Case 10-12306-PB11 Filed 03/16/11 Doc 96 Pg. 5 of 8

1	4. Beginning in or around	Hearsay (Fed R. Evidence §	Sustained:
	April 10, 2007, Dan Brooks,	801(c)). To the extent	Overruled:
2	through TFO began making a series of unsecured loans to All	McCallum bases his allegation on the contents of statements	evenued.
3	Star that irrevocably submited	from Dan Brooks (President of	
4	to the jurisdiction and venue of	Cold Smoke) or the contents of	
4	the State of California and were	other court filings, the	
5	executed with provisions for governance, construction and	testimony and contents of such writings is hearsay.	
6	interpretation pursuant to the	Improper Opinion Testimony	
7	laws of the State of California which I now believe is	Improper Opinion Testimony (Fed R. Evidence § 702).	
	usurious.	McCallum is not competent to	
8		offer testimony about	
9	McCallum Decl. ¶ 4.	California Law or whether	
		documents he references (but does not attach to the	
10		declaration) comply with such	
11		law.	
12	5. The loans arose out of	Lacks Foundation/Lack of	Sustained:
	discussions with Michael Traa,	Personal Knowledge (Fed. R.	Sustained:
13	who is Dan Brooks and TFO's	Evidence § 602). McCallum	Overruled:
14	agent/fund manager Michael	does not provide any basis for	
1.5	Traa represented that he managed and controlled a	how he would have personal knowledge of Traa's business	
15	significant amount of funds for	relationship with Dan Brooks.	
16	Dan Brooks and/or TFO.	-	
17	MaCallana Daal @5	Hearsay (Fed R. Evidence §	
	McCallum Decl. ¶ 5.	801(c)). To the extent McCallum bases his allegation	
18		on the contents of statements	
19		from Mike Traa such testimony	
		is impermissible hearsay.	
20		Improper Opinion Testimony	
21		(Fed R. Evidence § 702).	
22		McCallum is not competent to	
		offer testimony about whether	
23		or not Traa is or was an agent of Cold Smoke as that	
24		relationship requires a legal	
25		conclusion to be determined by	
		the Court not a lay witness.	
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Case 10-12306-PB11 Filed 03/16/11 Doc 96 Pg. 6 of 8

1	6. David Kahn had no knowledge of any of the	Lacks Foundation/Lack of Personal Knowledge (Fed. R.	Sustained:
2	disussions, conversations,	Evidence § 602). McCallum	Overruled:
	representations or negotiations	cannot possibly know what	
3	between myself and/or All Star and Michael Traa	knowledge is in the mind of David Kahn, unless of course	
4	and whenaer traa	this Declaration was actually	
5	McCallum Decl. ¶ 6.	written by David Kahn and	
3		simply signed by Mr.	
6		McCallum.	
7		Hearsay (Fed R. Evidence §	
8		801(c)). To the extent	
		McCallum did actually write the text of the declaration	
9		(which is questionable) this	
10		statement about Mr. Kahn's	
11		lack of "knowledge" could only be based upon Kahn's	
		statement to McCallum, and	
12		such testimony is	
13		impermissible hearsay.	
14	7. Kahn believed the funds	The use of the third person by	Sustained:
1.5	McCallum was investing with Kahn were coming from the	Declarant actually supports Cold Smoke's supposition that	Overruled:
15	All Star business.	this declaration was actually	evenueu.
16		drafted by Kahn, not	
17	McCallum Decl. ¶ 7.	McCallum. Regardless the	
		statement is objectionanable and should be	
18		stricken/disregarded.	
19		Lacks Foundation/Lack of	
20		Personal Knowledge (Fed. R.	
		Evidence § 602)). McCallum	
21		cannot possibly know what	
22		knowledge is in the mind of David Kahn, or what David	
23		Kahn did or did not believe,	
		unless of course this Declaraton	
24		was actually written by David Kahn and simply signed by Mr.	
25		McCallum.	
26		Hanrony (Fed D. Evidence &	
27		Hearsay (Fed R. Evidence § 801(c)). To the extent	
		McCallum did actually write	
28			

Case 10-12306-PB11 Filed 03/16/11 Doc 96 Pg. 7 of 8

1 2 3		the text of the declaration (which is questionable) this statement about Mr. Kahn's "belief" could only be based upon Kahn's statement to	
4		McCallum, and such testimony is impermissible hearsay.	
5	8. When TFO began	Lacks Foundation/Lack of	
6	making these series of unsecured loans, TFO did not	Personal Knowledge (Fed. R. Evidence § 602). McCallum	
7	conduct due diligence on All Star nor was All Star requried	cannot possibly know what due diligence was performed by	
8	to provide	TFO/Cold Smoke, because such actions were by definition	
9	McCallum Decl. ¶ 8.	performed by another party. The fact that McCallum may be	
10		unaware of such due dilligence	
11		investigation does not allow him to speculate that none took	
12		place.	
13	9. Further, the loan	Hearsay (Fed R. Evidence §	
14	documents had no provisions for use of proceeds.	801(c)). To the extent McCallum bases his allegation	
15	McCallum Decl. ¶ 9.	on the contents of documents (not attached to the	
16		Declaration) the testimony and contents of such writings is	
17		hearsay.	
18	10. David Kahn didn't have	Lacks Foundation/Lack of	
19	any knowledge whatsover regarding TFO's lack of due	Personal Knowledge (Fed. R. Evidence § 602). McCallum	
20	dilligence, had never seen any TFO loan documents or	cannot possibly know what knowledge is in the mind of	
21	consulting agreements, or any	David Kahn, or what David	
22	provisional purchase order forms until after Cold Smoke	Kahn did or did not know about TFO's due diligence, unless of	
23	brought suit.	course this Declaraton was actually written by David Kahn	
24	McCallum Decl. ¶ 10.	and simply signed by Mr.	
25		McCallum.	
26		Hearsay (Fed R. Evidence § 801(c)). To the extent	
27		McCallum did actually write	
28		the text of the declaration -6-	

-6-

Case 10-12306-PB11 Filed 03/16/11 Doc 96 Pg. 8 of 8 (which is questionable) this 1 statement about Mr. Kahn's "knowledge" could only be 2 based upon Kahn's statement to McCallum, and such testimony 3 is impermissible hearsay. 4 5 Dated: March 16, 2011 JOHNSON BOTTINI, LLP 6 FRANK J. JOHNSON BRETT M. WEAVER 7 /s/ Brett M. Weaver 8 BRETT M. WEAVER 9 501 W. Broadway, Suite 1720 San Diego, CA 92101 10 Telephone: (619) 230-0063 Facsimile: (619) 238-0622 11 COHEN COOPER ESTEP & ALLEN, LLC 12 STEVEN J. ESTEP (GA Bar No. 250450) JEFFERSON M. ALLEN (GA Bar No. 010898) 13 Admitted Pro Hac Vice 3330 Cumberland Boulevard, Suite 600 14 Atlanta, Georgia 30339 Telephone: (404)814-0000 15 Facsimile: (404)816-8900 16 Counsel for Creditor Cold Smoke Finance, LLC 17 18 19 20 21 22 23 24 25 26 27 28 -7-CREDITOR COLD SMOKE FINANCE, LLC'S EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF

CREDITOR COLD SMOKE FINANCE, LLC'S EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF DAVID KAHN AND TIM MCCALLUM